

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 0000054384	FOR FURTHER ACTION		See item 4 below
International application No. PCT/EP2004/003845	International filing date (day/month/year) 13 April 2004 (13.04.2004)	Priority date (day/month/year) 16 April 2003 (16.04.2003)	
International Patent Classification (IPC) or national classification and IPC C12N 15/09, C12P 7/84			
Applicant BASF PLANT SCIENCE GMBH			

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Box No. I | Basis of the report |
| <input checked="" type="checkbox"/> Box No. II | Priority |
| <input type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> Box No. VI | Certain documents cited |
| <input type="checkbox"/> Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> Box No. VIII | Certain observations on the international application |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis.2).

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. +41 22 740 14 35	Date of issuance of this report 21 October 2005 (21.10.2005)
Form PCT/IB/373 (January 2004)	Authorized officer Agnes Wittmann-Regis Telephone No. +41 22 338 89 70

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 28 JUL 2004

WPO/T PCT

To:

see form PCT/ISA/220

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)**

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference see form PCT/ISA/220		FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/EP2004/003845	International filing date (day/month/year) 13.04.2004	Priority date (day/month/year) 16.04.2003	
International Patent Classification (IPC) or both national classification and IPC C12N15/09, C12P7/64			
Applicant BASF PLANT SCIENCE GMBH			

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of Invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or Industrial applicability; citations and explanations supporting such statement.
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the International application
- Box No. VIII Certain observations on the International application

2. FURTHER ACTION

If a demand for International preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**International application No.
PCT/EP2004/003845**Box No. I Basis of the opinion**

1. With regard to the language, this opinion has been established on the basis of the International application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the International application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material:
 in written format
 in computer readable form
 - c. time of filing/furnishing:
 contained in the International application as filed.
 filed together with the International application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**International application No.
PCT/EP2004/003845**Box No. II Priority**

1. The following document has not been furnished:

- copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
- translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the International filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

see separate sheet

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	1-4
	No: Claims	5-10
Inventive step (IS)	Yes: Claims	
	No: Claims	1-10
Industrial applicability (IA)	Yes: Claims	1-10
	No: Claims	

2. Citations and explanations

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/EP2004/003845

1. The present application is concerned with a method of increasing the total oil content in a plant organism, comprising the transgenic expression of an acyltransferase, and genetic constructs useful therefore.
The priority of European Application 03008909, filed 16.04.2003, is validly claimed

2. Reference is made to the following documents:

- D1 WO00/18889
D2 Jain et al., Biochemical Society Transactions, vol. 28, part 6, 2000, p. 958-961
D3 Jako et al., Plant Physiology, vol. 126, June 2001, p. 861-874
D4 Taylor et al., Molecular Breeding, vol. 8, 2001, p. 317-322

The proteins used in the present invention are known in the art. However, only the protein having SEQ ID NO: 2 was identified as acyltransferase (D1).

3. D1 discloses vectors for expressing the acyltransferase in plant cells and plant cells comprising the acyltransferase (p. 11, l. 20- p. 12, l. 3). D1 thus anticipates the subject-matter of claims 5-10 (Article 33(3) PCT).
4. It was known that plants transformed with acyltransferase have an increased oil content (D2-D4). The skilled person thus would not be surprised that the expression of the acyltransferase of D1 also results in an increased oil content. The subject-matter of claims 1-4 therefore is not considered to be based on an inventive activity (Article 33(2) PCT).